

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 04-10166- RGS

UNITED STATES OF AMERICA

v.

DAVID C. ARNDT

MEMORANDUM AND ORDER ON DEFENDANT'S
MOTION FOR DE NOVO REVIEW AND REVOCATION
OF THE MAGISTRATE-JUDGE'S DETENTION ORDER

October 6, 2004

STEARNS, D.J.

After a review of the extensive record compiled in the proceedings before the Magistrate-Judge, and the additional material submitted by the defendant, the motion will be DENIED. While under the bail statute, 18 U.S.C. § 3145(b), a determination by a Magistrate-Judge is not entitled to deference, that is not to say that her decision is entitled to no consideration at all, particularly where the reviewing court's analysis of the record finds substantial support for her conclusions. As was the Magistrate-Judge, I am persuaded by the record that the government has shown by clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community, and has also shown by a preponderance of the evidence that the defendant poses a serious risk of flight.

With regard to the safety of the community, I have considered the defendant's predatory sexual conduct towards minors, his proclivity, as the Magistrate Judge aptly stated, "for impulsive, if not violent behavior," the allegations that he has engaged in the unauthorized practice of medicine, the finding of the Board of Registration in Medicine that he poses a threat to the health, safety, and welfare of the public, and his escalating pattern

of erratic and self-destructive behavior.

With regard to the risk of flight, in addition to the rebuttal flight presumption established by 18 U.S.C. § 3142(e),¹ I have considered the defendant's apparent access to large sums of cash, his intimate association with a foreign national, and the incentive to flee inherent in the prospect of a lengthy sentence.

I have finally taken into account (as did the Magistrate-Judge), the defendant's prior broken promises to pursue drug treatment (which is sufficient reason in and of itself to reject the conditions of release that he now proposes), as well as the evidence that defendant continued his drug dealing after being admitted to bail by the state court.

ORDER

For the foregoing reasons, the motion to revoke or amend the detention order is DENIED.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

¹As the Magistrate-Judge accurately points out in her Memorandum of Decision, despite defendant's self-portrayal, his criminal involvement with drugs is more consistent with that of an experienced drug dealer than with the behavior of a mere addict.